

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF NEW JERSEY
 3 Civil No. 05-05595(JLL)

4 - - - - -X
 MARK VAN, :
 5 : TRANSCRIPT OF
 Plaintiff, : PROCEEDINGS
 6 :
 -vs- :
 7 :
 BOROUGH of NORTH HALEDON, : December 5, 2008
 8 et al., :
 :
 9 Defendants. : Newark, New Jersey
 :
 10 - - - - -X

11
 12
 13 B E F O R E:

14 THE HONORABLE JOSE L. LINARES,
 15 UNITED STATES DISTRICT COURT JUDGE
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 17
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19 Pursuant to Section 753 Title 28 United States Code, the
 20 following transcript is certified to be an accurate record
 21 as taken stenographically in the above-entitled proceedings.

22 s/Phyllis T. Lewis, CSR, CRR

23 - - - - -
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Department.

1 THE COURT: Are counsel here on the next case?

2 MR. FAUGNO: Yes.

3 THE COURT: Come on up.

4 This is in the matter of Mark Van versus the
5 Borough of North Haledon, a motion brought by one defendant,
6 specifically Mark Rowe, to dismiss the complaint basically
7 based on the statute of limitations.

8 Counsel, your appearances for the record,
9 please.

10 MR. FAUGNO: Good morning, your Honor.

11 Paul Faugno from Faugno & Associates on behalf of
12 the plaintiff, Mark Van.

13 THE COURT: Okay. Wait.

14 Lissette, do we have an appearance sheet?

15 (Court and Clerk confer.)

16 I'm sorry. Go ahead, enter your appearances.

17 MR. FAUGNO: Good morning, your Honor.

18 Paul Faugno from Faugno & Associates on behalf of
19 the plaintiff, Mark Van.

20 THE COURT: Okay.

21 MR. RAINONE: Good morning, your Honor.

22 Anthony Rainone, Podvey Meanor, on behalf of
23 the movants, Sergeant Rowe, and I represent all of the North
24 Haledon defendants.

25 MR. ROBERTELLI: John Robertelli from the firm of

1 Rivkin Radler on behalf of Detective John Centrillo and the
2 Dumont Police Department.

3 THE COURT: Are you taking any position in this
4 case?

5 MR. ROBERTELLI: No, your Honor. I'm merely here
6 to observe.

7 THE COURT: Okay.

8 Counsel, look, I have read all of the briefs in
9 this matter in detail. I know that the original complaint
10 in this matter was filed back on November 23rd of 2005. I
11 know that defendant Rowe was not included in that. The
12 amended complaint was filed June 6th of '08, right?

13 MR. RAINONE: Correct.

14 THE COURT: The incident, which gave rise to all of
15 the allegations, is the visit to the Harrington Park
16 Department with the two police officers, and I believe that
17 took place back on November 24th, '04.

18 MR. RAINONE: Correct.

19 THE COURT: If I am in correct on any of this, I am
20 just going by memory here.

21 I also know that the first disclosure statement by
22 the defense, which disclosed at least Rowe's name, were done
23 back on July 14th of '06.

24 Interrogatories were answered subsequently on
25 November 2nd of '06, and depositions took place beginning in

1 March of '07, and more specifically Officer Linari's, I
2 think is his name, deposition took place on August 2nd of
3 2007. I think those are all facts that may come into play
4 in the arguments today.

5 So with that background, defendant claims that
6 there are two types of claims against defendant Rowe, the
7 1983 actions, which would have a two-year statute of
8 limitations. I don't think the plaintiff disagrees with the
9 two-year statute on that.

10 MR. FAUGNO: No, I don't.

11 THE COURT: And the defamation and slander claims
12 would have a one-year statute, and you would not have a
13 problem with that either?

14 MR. FAUGNO: That's correct.

15 THE COURT: Okay. I will hear from you.

16 MR. RAINONE: Thank you, judge.

17 THE COURT: Let's deal with it, so we can
18 streamline the argument, okay?

19 And your name is?

20 MR. RAINONE: Anthony Rainone, your Honor

21 THE COURT: Mr. Rainone.

22 MR. RAINONE: I agree it seems to be a pretty
23 simple issue that's left.

24 THE COURT: It is. But let's talk about how would
25 he have known about a claim, a 1983 claim, for this

1 conspiracy to concoct the story, which is his claim, right?

2 We are only dealing with what his claim is at this point.

3 How would he have known about that, about Rowe's
4 involvement in that at the time that he made the disclosure?

5 What is it about your disclosures that give him
6 notice of that, other than the fact that it says that he is
7 the guy with knowledge?

8 MR. RAINONE: Actually, Judge, the initial
9 disclosures say --

10 THE COURT: Let's look at it. Which --

11 MR. RAINONE: This is counsel's declaration within
12 the moving brief, Exhibit D.

13 THE COURT: Exhibit D?

14 MR. RAINONE: Yes, the initial disclosure
15 statement.

16 THE COURT: Exhibit D. I have it here, and I read
17 it.

18 MR. RAINONE: It's pretty specific.

19 THE COURT: It says: Has knowledge regarding a
20 report made to him about a person identifying himself as
21 Mark Van to the North Haledon Police about an altercation in
22 New York City --

23 MR. RAINONE: Sorry.

24 THE COURT: -- so he had knowledge about that. All
25 the disclosure statement says is that Mark Rowe has

1 knowledge about that --

2 MR. RAINONE: And, your Honor --

3 THE COURT: -- has knowledge about a report that
4 was made to him.

5 MR. RAINONE: -- I will explain exactly how this
6 gives plaintiff notice, and why he should have filed this
7 sooner.

8 Plaintiff filed a motion to amend the complaint in
9 the first motion. This was filed April of 2007 right after
10 he deposed Sergeant Rowe, but before he deposed Sergeant --
11 Officer Centrillo. Here is the critical fact. He made a
12 motion to amend to add Centrillo, not Serteant Rowe.

13 Now, he had not deposed Centrillo. Yet, he claims
14 now that he couldn't in good faith allege a claim against
15 Rowe and Centrillo until he had deposed both of them, and
16 then Linari, who showed up and testified and said, I never
17 said anything.

18 THE COURT: Wait a minute.

19 But the assumption -- Centrillo is the New York
20 police officer, right?

21 MR. RAINONE: No. Linari is the New York police
22 officer.

23 THE COURT: Centrillo --

24 MR. RAINONE: Centrillo is Dumont.

25 THE COURT: Centrillo is Dumont, right?

1 MR. RAINONE: Yes.

2 THE COURT: A Dumont officer who supposedly, if all
3 of the facts were true, was told by Linari, right, that Mark
4 Van flashed a badge.

5 MR. RAINONE: Yes.

6 THE COURT: Okay. The plaintiff himself presumably
7 knows that anything that Centrillo said was not true.

8 MR. RAINONE: That is plaintiff's allegation.

9 THE COURT: So he would know that. So once he
10 knows that it was Centrillo that originally made the report,
11 he knew he had a cause of action against Centrillo, right?

12 MR. RAINONE: At that point, yes, because --

13 THE COURT: So he moves to bring in Centrillo.

14 MR. RAINONE: He hadn't deposed Centrillo at that
15 point.

16 THE COURT: Without deposing Centrillo, the minute
17 he knows that the report was made by Centrillo, he knew
18 Centrillo was lying.

19 MR. RAINONE: That just is an allegation,
20 absolutely.

21 THE COURT: So that gives rise to a claim as
22 against Centrillo at that point.

23 MR. RAINONE: As to Centrillo possibly.

24 THE COURT: Right.

25 Well, how does it give rise to knowledge of a claim

1 as against Rowe at that point?

2 MR. RAINONE: I am saying the claim accrued against
3 Rowe at the same time it accrued against the other North
4 Haledon officers. That is the first issue, Judge.

5 THE COURT: Yes, but the statute of limitations,
6 though, is when the plaintiff knew or should have known,
7 right?

8 MR. RAINONE: Knew or should have known of facts
9 giving rise to an injury attributable to somebody else.

10 THE COURT: Attributable to something done by in
11 this case Rowe. Let's concentrate on Rowe.

12 MR. RAINONE: Okay. I agree.

13 The rule is not the specific person. It is just by
14 somebody else, so the officers go to --

15 THE COURT: Yes. But the someone else who is
16 making the motion for a dismissal based on the statute of
17 limitations here is Rowe, so the question is: What did he
18 know or should have known about Rowe's actions, that his
19 actions are attributable to his actions --

20 MR. RAINONE: Actually, it goes back to December, a
21 few weeks after the incident.

22 Plaintiff's attorney wrote a letter to the North
23 Haledon Chief of Police.

24 THE COURT: Saying I have a cause of action here.

25 MR. RAINONE: Right.

1 Chief Ferrante wrote back very quickly and said
2 specifically a North Haledon sergeant received a tip.

3 THE COURT: Right, okay.

4 MR. RAINONE: That at the very least is when
5 plaintiff was on notice, there is a sergeant involved here,
6 too.

7 THE COURT: There is a sergeant involved, but
8 involved doesn't mean you have a cause of action. It is
9 like, for example, you serve me with -- I send you a notice
10 of claim that I am going to make a claim against the
11 University of Medicine & Dentistry for malpractice, okay?

12 MR. RAINONE: Okay.

13 THE COURT: And you tell me, and I say what people
14 have knowledge about this.

15 And you say the EMS people have knowledge about
16 this, because they received a call about the injury that
17 brought them to the hospital. The emergency room physician
18 has, you know, also knowledge on it, and the
19 anesthesiologist and the surgeon all have knowledge, right?

20 Then I file the claim against the anesthesiologist
21 and the surgeon, and I don't sue the EMS people, but I know
22 that they have knowledge, and I know that they exist. That
23 doesn't give you a right to a claim against them.

24 Subsequently, I find out that the EMS people wrote
25 the wrong report to the surgeon or something. That is when

1 I know or should know that I have a claim against them,
2 right?

3 The mere fact that Rowe gets a tip, if that is all
4 you know, you don't know that Rowe is involved in any lying
5 or anything. At that point all you know is that he was the
6 one who supposedly received a tip from somebody.

7 How does that give rise to know or should know that
8 you have a claim against him?

9 MR. RAINONE: Your Honor, because the whole theory
10 by plaintiff is all of these cops got together and concocted
11 the allegation. So how could the claim accrue as to some
12 cops back in November of 2004, but not other cops who
13 plaintiff knew or reasonably should have known were
14 involved?

15 I think if I could ask the Court a question,
16 because I think that I may be confused as to the Court's
17 understanding of the accrual, my understanding of the
18 accrual is, it is not that he has to know the specific
19 defendant. The accrual rule is you know or reasonably
20 should know you have injuries attributable to the actions of
21 others, so --

22 THE COURT: But you have to know who the others
23 are. In other words, the statute of limitations is specific
24 to people. It is not just the actions. It's not just when
25 the action accrues. It's when the action accrues, yes. The

1 action accrues the day they come to see him, I guess, right,
2 and he gets terminated?

3 MR. RAINONE: Yes -- no. That is much later.

4 THE COURT: Well --

5 MR. RAINONE: I think this is important, if I
6 could, Judge.

7 THE COURT: Go ahead.

8 MR. RAINONE: The claim is simply they are coming,
9 making up this allegation supposedly and visiting them.

10 Plaintiff is the one who months later told his own
11 chief, Hey, Chief, this cop came to see me. My cops never
12 went to his employer, never did anything like that, so this
13 claim is literally a claim by one cop saying a couple cops
14 came and asked me questions. That is the claim.

15 THE COURT: That will be sorted out in the merits
16 of the case.

17 MR. RAINONE: I agree, but my understanding is
18 knowing or reasonably should know your injuries attributable
19 to others.

20 THE COURT: Okay. When did you say that that
21 happened?

22 MR. RAINONE: I say that happened at the earliest
23 November 24th --

24 THE COURT: When the two police officers come to
25 see him?

1 MR. RAINONE: Yes.

2 THE COURT: All right.

3 At that point who do you suggest the statute of
4 limitations begins to run as to, everybody in the world?

5 MR. RAINONE: No. As to any of the North Haledon
6 defendants, who plaintiff alleges engaged in the conspiracy.

7 THE COURT: That he knew or should have known were
8 engaged in the conspiracy --

9 MR. RAINONE: Yes, right.

10 THE COURT: -- right?

11 How could he have known at that time that Sergeant
12 Rowe was engaged in the conspiracy?

13 MR. RAINONE: Well, that is up to him at that point
14 to exercise due diligence in investigating, and as to
15 Sergeant Rowe, it would be no later than the December letter
16 from Chief Ferrante in identifying a sergeant in the North
17 Haledon Police Department who received the tip.

18 This is not the New York City Police Department,
19 Judge. This is the North Haledon Police Department. You
20 are talking about 20 cops. There is one sergeant in the
21 police department.

22 THE COURT: All right.

23 So he is told that the North Haledon Police
24 Department received a tip. That doesn't give him a right to
25 sue them at that point just because he received a tip.

1 MR. RAINONE: Well, then he filed a notice of claim
2 in February of 2005 arising out of the incident, so even if
3 we skip to February of '05, he still has -- that has to be
4 the accrual date, if plaintiff is filing a notice of claim,
5 he clearly knows or should know of injuries that are
6 attributable to others.

7 THE COURT: He does know that, but he just doesn't
8 know who all of the others are at that point.

9 MR. RAINONE: And it's up to him to exercise due
10 diligence at that point --

11 THE COURT: Where did he not exercise due
12 diligence?

13 MR. RAINONE: He did not exercise due diligence
14 from the moment he got initial disclosures -- I'm sorry --
15 back to December of '04 when he got a letter from the chief
16 identifying the sergeant, in quotes. When he got initial
17 disclosures in July of 2006 describing Sergeant Rowe's
18 involvement, when he got interrogatories in September 2006
19 identifying Rowe and Centrillo, when he deposed Rowe, who
20 was the source of the tip.

21 Here is the thing, Judge. He has alleged that
22 Detective Parenta, Lieutenant Darby, and Chief Ferrante got
23 together and concocted this conspiracy. Centrillo wasn't in
24 the picture then --

25 THE COURT: Who?

1 MR. RAINONE: Officer Centrillo was from another
2 police department.

3 So if he had a reason to believe these cops
4 concocted this allegation and then he deposes Sergeant Rowe
5 and he says to him, I got the tip from this other cop, why
6 at that point has the claim approved -- we told him Sergeant
7 Rowe's involvement. We told him the source of the
8 information was in July 2006, Judge, and now --

9 THE COURT: When was Sergeant Rowe deposed?

10 MR. RAINONE: March of 2007.

11 THE COURT: Wait. March of 2007.

12 MR. RAINONE: Yes. All of the North Haledon --

13 THE COURT: Okay. The complaint was filed in '08.

14 MR. RAINONE: But, Judge, my point is this: That
15 is when the dep was taken. He noticed these depts long
16 before March of 2007, presumably because in the initial
17 disclosure Sergeant Rowe was identified.

18 THE COURT: Suppose he deposed Sergeant Rowe, and
19 he said, I never said anything about getting a tip.

20 Does he have a cause of action against Sergeant
21 Rowe?

22 MR. RAINONE: If Sergeant Rowe said I never got a
23 tip?

24 THE COURT: Yes.

25 Suppose he had said, I don't know what Ferrante is

1 talking about. I don't know why they identified me. I had
2 nothing to do with it.

3 MR. RAINONE: At that point, no, he wouldn't
4 have --

5 THE COURT: But the day that he said, I received
6 the tip, then you know he is in the conspiracy, right?

7 MR. RAINONE: According to plaintiff, but --

8 THE COURT: How else would he know that he is in
9 the conspiracy up to that point?

10 MR. RAINONE: Because if he believed there was a
11 conspiracy by three other cops in North Haledon, why on
12 earth didn't he have notice to sue this sergeant who was
13 already identified, Judge?

14 This is -- again, the law in New Jersey is, it is
15 not that he had to know Sergeant Rowe was lying or
16 concocting a conspiracy. If he had a good faith basis to
17 sue the other three cops, why doesn't he have a good faith
18 basis to sue Sergeant Rowe?

19 This is textbook non due diligence. He knew about
20 this sergeant forever in this case.

21 The argument about he didn't have a good faith
22 basis to sue him until he deposed him, Centrillo and Officer
23 Darby is a red herring because he tried to sue Centrillo
24 before he got to Centrillo, so I ask the Court to ask
25 plaintiff to explain that, why did he have a basis to file a

1 motion --

2 THE COURT: I intend to ask that.

3 MR. RAINONE: -- that is my biggest point.

4 THE COURT: All right. Let me talk to the
5 plaintiff for a minute.

6 MR. RAINONE: Thank you, your Honor.

7 THE COURT: Let me just ask you a question because
8 he hit the nail on the head as to what was bothering me
9 about your claim, even though I was putting him on the spot.

10 What was your basis for believing that there was a
11 conspiracy when you originally filed your complaint on
12 November 23rd of 2005?

13 Who did you file your original complaint against?

14 MR. FAUGNO: Originally, your Honor, the complaint
15 was filed against Ferrante, Parenta and Darby for this
16 reason --

17 THE COURT: Now, you thought that they were
18 concocting a story at that point --

19 MR. FAUGNO: Absolutely.

20 THE COURT: -- and you had reason to know that?

21 MR. FAUGNO: Well, my client indicated to me --

22 THE COURT: That he never was in New York.

23 MR. FAUGNO: -- that he was never in New York City,
24 and it was a complete fabrication.

25 THE COURT: Right.

1 MR. FAUGNO: Now, this is a very important point,
2 your Honor.

3 Mr. Rainone referred to a letter I received from
4 the chief after I served my notice of intent to make a
5 claim. I don't know if the Court has it in front of it, but
6 I think we will agree, if the Court looks at that --

7 THE COURT: I want to see it. If you are going to
8 talk about it, I want to read it, because I read everything.

9 MR. RAINONE: It's in my reply declaration.

10 THE COURT: What exhibit?

11 MR. RAINONE: Exhibit B.

12 THE COURT: Got it.

13 MR. RAINONE: December 17th.

14 THE COURT: I got it.

15 MR. FAUGNO: Without looking at it, because I am
16 very familiar with what it says, it omits --

17 THE COURT: Wait, wait, wait. Exhibit B is that
18 what you said?

19 MR. RAINONE: Exhibit B. I'm sorry.

20 THE COURT: B, as in boy?

21 MR. RAINONE: B, as in boy. That is a reply
22 declaration for the exhibits.

23 THE COURT: Okay. Let me just read it.

24 What he is referring to is a paragraph wherein
25 Chief -- okay. It is actually an attorney and countersigned

1 by Chief Ferrante --

2 MR. RAINONE: I apologize.

3 THE COURT: -- it's from an attorney named Segretto
4 to Mr. Faugno.

5 Is that how you pronounce your name?

6 MR. FAUGNO: Yes.

7 THE COURT: I assume the operative paragraph you
8 are referring to is in that letter. The lawyer on behalf of
9 the Borough of North Haledon Police Department said: A
10 North Haledon sergeant accepted a phone call regarding
11 Officer Van's conduct. The information he received
12 regarding the incident was forwarded to the North Haledon
13 bureau, et cetera, right?

14 MR. RAINONE: One thing, Judge, if I could clear it
15 up.

16 That letter is from the chief. This is just a
17 direction to sending correspondence to James Segretto --

18 THE COURT: It doesn't make a difference who it's
19 from, if it's from the lawyer or the chief. It is from the
20 police department. So the question is: Did he get it, did
21 he ask that information.

22 What difference does it make?

23 It could have been from a citizen. The question is
24 that he knew, right?

25 MR. RAINONE: Yes.

1 THE COURT: He knew that a sergeant had accepted a
2 phone call, the North Haledon sergeant.

3 Okay. Go ahead. Address that.

4 MR. FAUGNO: At that point, all that letter told me
5 is that some sergeant, not identified, and it is interesting
6 when we talk about due diligence with the police department,
7 I am dealing with a police officer who is losing his job,
8 and they don't give me the name of the police officer,
9 number one. Okay? All it tells me is that some sergeant
10 received a report.

11 However, your Honor, what this letter does not
12 disclose, and this is one of my big issues in this case, it
13 doesn't mention the name John Centrillo. Okay?

14 They talk about due diligence --

15 THE COURT: Wait, wait, wait.

16 At that point you say you knew that this whole
17 thing was concocted because your client knew they were
18 lying, right?

19 MR. FAUGNO: Well, I knew that the people that went
20 to talk to him and confronted him with the allegations --

21 THE COURT: Were lying.

22 MR. FAUGNO: -- I didn't know what it meant about
23 somebody receiving a tip. Okay? It doesn't say exactly
24 what the tip was.

25 THE COURT: Okay. I agree with you.

1 Let's move forward now and talk about the
2 disclosure then.

3 MR. FAUGNO: Now, the disclosure, your Honor,
4 simply says, it gives me a name now.

5 THE COURT: It gives you a name, and it says that
6 that name -- let's look at the disclosure -- let me find it.

7 MR. FAUGNO: Had knowledge regarding the report.

8 THE COURT: Which exhibit is the disclosure?

9 MR. RAINONE: That is Exhibit D in the original --

10 THE COURT: Okay.

11 So the disclosure says, has knowledge regarding the
12 report.

13 Now, you know who is the person who has knowledge
14 regarding the report --

15 MR. FAUGNO: Yes.

16 THE COURT: -- made to him.

17 MR. FAUGNO: Yes. That is true, but I don't
18 know --

19 THE COURT: A report made to him.

20 MR. FAUGNO: Right.

21 But I don't know at that point whether somebody
22 made a report to him or not. Okay?

23 That is what -- in other words, that is what is
24 being alleged. But, Judge, what you have to understand is,
25 it doesn't give me the information about who made the report

1 to him.

2 THE COURT: But it doesn't make a difference
3 because you know there was no such thing. In your head, you
4 already know that. You knew that back when they went back
5 to the Harrington Park Department, you knew that this whole
6 thing was a lie.

7 MR. FAUGNO: But I didn't know where the lies were
8 coming from. Okay?

9 THE COURT: But now you know where it is coming
10 from, don't you?

11 MR. FAUGNO: No, I don't, because it is coming from
12 John Centrillo allegedly, and that is the crucial piece of
13 information.

14 THE COURT: You are being told in the defendants'
15 disclosure statement, that the following individuals have
16 information, and one of the things they tell you is that
17 Mark Rowe received a report. If Mark Rowe said that he
18 received a report, that doesn't say that he is lying --

19 MR. FAUGNO: With respect, it doesn't say he
20 received a report. It said he had knowledge regarding a
21 report.

22 THE COURT: Made to him. Exactly.

23 MR. FAUGNO: Made to him, correct.

24 THE COURT: You know that is not true. He couldn't
25 have possibly received a report.

1 MR. FAUGNO: I don't know that it is not true that
2 somebody made the report.

3 Somebody could have been lying to him, okay? And
4 until I found out about the name John Centrillo -- see, at
5 the point of this disclosure, I had no idea who John
6 Centrillo was. I never heard the name in my life.

7 Even though the police department and even though
8 theoretically the lawyers when they made this disclosure
9 knew who John Centrillo was, were camouflaging his name. It
10 wasn't disclosed to me.

11 So the first time I find out about Centrillo is
12 when I start taking depositions -- well, actually when I
13 received the Answers to Interrogatories, and now they tell
14 me that Centrillo is the one who reported to Rowe.

15 So I say wait a second, who is this guy Centrillo?
16 He is making a report to Rowe. You know, what is his
17 involvement, okay?

18 I don't want to just start naming police officers
19 until I have -- you know, I am kind of on a wild goose chase
20 at this point. I want to find out what is going on here.

21 THE COURT: Let's see what is told to you in the
22 Answers to Interrogatories.

23 MR. FAUGNO: Well, it is not so much the Answers to
24 Interrogatories. It is the documents that came with the
25 Answers to Interrogatories.

1 When I get the Answers to Interrogatories in
2 November of 2006, that is the first time I have become aware
3 when I get documents with the Answers to Interrogatories,
4 that John Centrillo is the individual who told Mark Rowe
5 that he was told by a New York City police officer that this
6 event had occurred in New York.

7 It was the first time I learned, your Honor,
8 November 2006, that Officer Centrillo refused -- that Mark
9 Rowe did not disclose the name of Centrillo, wanted to
10 shield the name of Centrillo because Centrillo wanted to
11 shield the name of Linari. Okay?

12 And it's when I received that information, I said
13 to myself, there is the conspiracy that --

14 THE COURT: But you had already sued based on that
15 conspiracy.

16 MR. FAUGNO: I didn't have the instrumental facts
17 to be able to make a claim against Rowe until I knew that
18 Linari denied that he ever said anything to Centrillo about
19 this. The New York City cop --

20 THE COURT: No, no, no. Wait a minute. That just
21 adds icing to your case, but that doesn't tell you that
22 that's when you knew all of these people were lying.

23 You knew all of these people were lying because
24 your client knew they were lying, right? That is your case.
25 It's a lie. This whole thing is a conspiracy. I knew about

1 it the day they came to see me at Harrington Park, I knew
2 those two guys were lying --

3 MR. FAUGNO: Judge, I mean, that sounds good in a
4 vacuum, but in reality when I am dealing with a client, and
5 I have someone saying an officer -- all I know until
6 November 2006 is that some guy named Rowe received a report.
7 Okay?

8 Maybe the report was a fabricated report, but he
9 really did receive it. Okay?

10 It wasn't until I was able to explore who this guy
11 Centrillo was and go back to the source of where this
12 originally started, where the source says it never happened
13 is when I believe I am really on notice.

14 It is really from a statute of limitations
15 standpoint, we are talking really -- my instrumental facts
16 were November of 2006. Okay? And that is when I knew or
17 should have known about the actual involvement of Mr. Rowe.

18 And by the way, Judge, I asked the question --

19 THE COURT: What is it that happened in November of
20 2006? That is the Answers to Interrogatories, right?

21 MR. FAUGNO: Well, the documents,

22 THE COURT: What do the documents reveal?

23 MR. FAUGNO: I get the police report that was the
24 only police report generated in this case that reflects that
25 John Centrillo called up Mark Rowe allegedly and said to

1 Mark Rowe, hey, I got a call from New York, and you know, go
2 speak to your chief because this guy tried to use a North
3 Haledon badge to explicate himself from an assault that
4 occurred over in New York City.

5 That is the first time that I had those facts, your
6 Honor. But what's crucial to me --

7 THE COURT: But at that point you know, right --

8 MR. FAUGNO: Yes.

9 THE COURT: -- as of November of '06, you knew that
10 that information was given to Rowe by Centrillo?

11 MR. FAUGNO: Correct.

12 THE COURT: You knew Centrillo was lying?

13 MR. FAUGNO: Yes.

14 THE COURT: You knew Rowe was lying?

15 MR. FAUGNO: Well, you know, Judge, I can't really
16 say I knew they all were lying until I deposed Linari, when
17 Linari claimed the alleged source of this, that he never
18 told it to anybody -- any police officer --

19 THE COURT: You knew they were lying because the
20 basis of your complaint is that this never happened.

21 MR. FAUGNO: No, Judge. Just follow my logic.

22 It did happen --

23 THE COURT: Okay.

24 MR. FAUGNO: -- however, who -- where the lie was
25 emanating from, for all I know, somebody in New York had

1 fabricated a lie. Okay?

2 If Linari got up and he testified, yeah, I did tell
3 this to all of these people, okay, then I may have had to go
4 in a different direction, but that is not what he said.

5 He said, I didn't tell these people.

6 So now I know somewhere the buck had to stop, all
7 right? And it is at that point that I know that what
8 Centrillo is saying, by a claims standpoint, what Centrillo
9 is saying and what Rowe is saying can't be true, because --

10 THE COURT: Isn't your theory that Rowe -- there is
11 some relationship between Rowe and Centrillo, right?

12 MR. FAUGNO: Yes.

13 THE COURT: And as a result, Centrillo called
14 Rowe --

15 MR. FAUGNO: Because they know each other.

16 THE COURT: -- because they know each other, right?

17 MR. FAUGNO: Right.

18 THE COURT: I remember from reading the deposition
19 what happened here was, or what was originally claimed was
20 that Centrillo said I know someone -- Linari had come to
21 him, and he said, I don't want to get involved because I
22 don't want to get in trouble, because I didn't write it up,
23 and I didn't arrest the guy, right?

24 MR. FAUGNO: Right.

25 THE COURT: So in order to protect Linari,

1 Centrillo said, I'll call somebody. I have a friend, right?
2 So he called Rowe.

3 MR. FAUGNO: Right.

4 THE COURT: That's your theory, right?

5 MR. FAUGNO: Yes.

6 THE COURT: That is not your theory. That is what
7 was originally claimed as happening.

8 Then he called Rowe. Rowe then made a report to
9 Ferrante, and we are off to the races, right?

10 MR. FAUGNO: Right.

11 THE COURT: But your theory is now having deposed
12 everybody, that what happened here was that Rowe and
13 Centrillo somehow got together to concoct a story, and it
14 floated all the way down, right, or --

15 MR. FAUGNO: In essence, yes.

16 THE COURT: -- or that they all got together.

17 MR. FAUGNO: My position is they all got together
18 to do it. That's the theory of my case. It was a theory
19 very well supported by the facts.

20 Judge, it is only a two-year statute of
21 limitations. If I was to be a Monday morning quarterback
22 about myself, which I try to be, it is easy in this
23 business, I probably could have filed a complaint six months
24 earlier, eight months earlier, but the reality is I did move
25 to file the complaint within two years of when I became

1 aware of the real facts, the only facts. I didn't even know
2 what Rowe claimed to have said he received until I received
3 the police report in November of 2006. I didn't know what
4 information he said he received. All I knew was information
5 that said he had received a report.

6 I didn't have details, where did he get the report
7 from. If I found out that he got the report from a police
8 report that was generated out of New York City, I would say,
9 look, the guy has a New York City police report that says
10 this happened, you know, maybe somebody is messing up over
11 in New York City.

12 But it is the first time I learned that that is not
13 what happened, that this is supposedly, oh, completely
14 incredulous, your Honor, that this guy Centrillo tells Rowe,
15 I want to protect the New York City cop because he doesn't
16 want to get involved. Well, if he doesn't want to get
17 involved, why would he make the call to begin with?

18 It doesn't make sense, so at that point of November
19 2006, the light goes on, okay, that says, look, all of these
20 guys --

21 THE COURT: Are lying.

22 MR. FAUGNO: -- are lying. That is the most
23 significant thing. I don't know that Rowe, before November
24 2006, is lying, because I don't know what information he
25 received. All I know is he got a report --

1 THE COURT: But as of November 2006, you know that
2 Rowe was lying, that's your point, and you filed a complaint
3 in 2008, within two years.

4 MR. FAUGNO: That's correct.

5 THE COURT: When then based on that representation,
6 your defamation claim goes out the window because that is a
7 one-year claim, and if you learn in November --

8 MR. FAUGNO: I am going to concede I may have a
9 problem on the defamation.

10 THE COURT: The defamation is out based on your
11 representation.

12 MR. FAUGNO: I will concede that.

13 THE COURT: All right.

14 Anything else?

15 MR. RAINONE: This November date is not accurate,
16 Judge.

17 THE COURT: Why isn't it accurate?

18 November 2, 2006 interrogatories were served.

19 MR. RAINONE: But our documents were served before
20 that in September, and our cover letter is attached to the
21 reply certification --

22 THE COURT: What difference does it make? He filed
23 a complaint June '06 --

24 MR. RAINONE: This goes to his due diligence,
25 Judge.

1 THE COURT: You think the two months will make a
2 difference in the due diligence argument here?

3 MR. RAINONE: I believe if the Court agrees with
4 the accrual argument, if it does, then yes, it will make a
5 difference because then we are getting into, well, if the
6 claims accrued in November and December of '04, now
7 plaintiff's only avenue to argue is the discovery rule --

8 THE COURT: The discovery rule, that is what we are
9 taking about here.

10 MR. RAINONE: There is absolutely no due diligence
11 here. When you look at the time line, Judge, you have --
12 just the motion for leave to amend, the second one was filed
13 three years after the approval, 16 months after the initial
14 disclosure was served, almost three years after Ferrante's
15 letter identifying the sergeant, 14 months after service of
16 the police report identifying Rowe and Centrillo, one year
17 after --

18 THE COURT: All right.

19 MR. RAINONE: -- eight months after he deposed
20 Sergeant Rowe, seven months after his first motion to amend
21 before he had deposed Centrillo or -- and eight months -- it
22 is just -- Judge, there are a couple of Third circuit cases
23 on point. This is not due diligence. He needs to show that
24 in the discovery rule, and it is not present in the record.

25 THE COURT: Isn't what transpired here that you,

1 meaning the police department, is the one who is in the
2 possession of all of the parties that are involved here,
3 right?

4 And when you tell them in your initial disclosure,
5 all you say is some sergeant, right?

6 Well, originally in the letter you say some
7 sergeant. You don't even give him the name.

8 Subsequently, you wait for the disclosure
9 statements to give the name that Sergeant Rowe has knowledge
10 of some report made to him as opposed to he made a report
11 based on Officer Centrillo. None of that stuff is told to
12 him, and then subsequent to when he does depositions and
13 interrogatories, that he gets more information.

14 So don't you bear some of the blame here, Counsel?

15 MR. RAINONE: No, we don't.

16 We identified Sergeant Rowe's knowledge, what he
17 knew, that he --

18 THE COURT: You didn't tell him that he knew it
19 from Centrillo.

20 MR. RAINONE: Not in the initial disclosure.

21 MR. FAUGNO: I want to know why not, Judge. I'd
22 like to know why not.

23 THE COURT: Counsel, let's not do that.

24 MR. FAUGNO: I'm sorry. I apologize.

25 MR. RAINONE: We identified Rowe in the initial

1 disclosure.

2 Within a couple of months after that, he is given
3 the police report --

4 THE COURT: But it is now given to them when,
5 September --

6 MR. RAINONE: September '06.

7 THE COURT: Right.

8 Then he thereafter notices the depositions, right?

9 MR. RAINONE: Yes.

10 THE COURT: And he takes the depositions about
11 three or four months later.

12 MR. RAINONE: Yes.

13 But if you go back to the accrual, the language
14 from the Third Circuit in O'Chifer versus Fishbein, it is
15 when plaintiff knows or has reason to know of the injury on
16 which the action is based. Then it is up to him at that
17 point to get up and figure out who.

18 It is not, okay, now I know this. Now I know --

19 THE COURT: You are right, the accrual of the cause
20 of action starts when he has heard and he knows that his
21 injuries as a result of somebody else being negligent or in
22 violation of his 1983 rights, or whatever it may be. That
23 is when the action accrues.

24 But the discovery rule sets up the statute of
25 limitations as to a particular defendant and begins to run

1 when he knew or should have known of that defendant's
2 participation in your injury, right?

3 MR. RAINONE: Yes, Judge.

4 THE COURT: The issue here is: Could he have known
5 through due diligence two years before June of '08.

6 Did he have reason to know as of June of '06 to due
7 diligence that Rowe was involved in this conspiracy. That's
8 the issue.

9 MR. RAINONE: Yes, I would say yes. He did based
10 on the December '04 letter identifying the sergeant --

11 THE COURT: A sergeant.

12 MR. RAINONE: -- a sergeant, yes, in a police
13 department.

14 THE COURT: Thank you.

15 I disagree with you. I think that the letter alone
16 does not give you a sufficient basis to know or should have
17 known of Rowe's involvement in this conspiracy. I think
18 that you are right, that the accrual of the cause of action
19 was at the time that they visited him at the Harrington Park
20 Police Department. But his reason to know or should know
21 that Rowe was involved did not occur at that time.

22 The first time that he even hears Rowe's name is at
23 the time of the disclosure statement. The disclosure
24 statement takes place in July of 2006. Even then, okay, if
25 we were to take the disclosure statement as of July 14th of

1 '06 as being the operative date, the complaint is filed on
2 June 6th of '08, within the two years. So therefore, I
3 don't find in this case that this is an appropriate case to
4 dismiss based on the two-year statute of limitations
5 applicable to the 1983 action.

6 So as to defamation, certainly he knew or should
7 have known by then that Rowe was in on this, and therefore
8 lying and therefore defaming him, and the one-year statute
9 of limitations fails, so I am striking that. I am allowing
10 the other claim, and that is my ruling. An order will
11 follow in accordance with those rulings.

12 Anything else?

13 MR. FAUGNO: Thank you very much, Judge.

14 MR. RAINONE: Just to state there were a couple of
15 state law claims that I presume will survive, infliction of
16 emotional --

17 THE COURT: Those are two years as well, and they
18 will survive.

19 Thank you very much.

20 MR. FAUGNO: Thank you.

21 MR. RAINONE: Thank you, your Honor.

22 (Court adjourned.)
23
24
25